

United States Court of Appeals
for the Fifth Circuit

United States Courts
Southern District of Texas
FILED

September 20, 2023

Nathan Ochsner, Clerk of Court

No. 23-20163

United States Court of Appeals
Fifth Circuit

FILED

September 20, 2023

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

BRIAN SWIENCINSKI,

Defendant—Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 4:18-CR-368-1

ORDER:

IT IS ORDERED that Appellant's unopposed motion to view and obtain sealed documents is GRANTED.



KURT D. ENGELHARDT
United States Circuit Judge

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

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600 S. MAESTRI PLACE,
Suite 115
NEW ORLEANS, LA 70130

September 20, 2023

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW:

No. 23-20163 USA v. Swiencinski
USDC No. 4:18-CR-368-1

Enclosed is an order entered in this case.

Sincerely,

LYLE W. CAYCE, Clerk

Christina Rachal

By: _____
Christina C. Rachal, Deputy Clerk
504-310-7651

Mr. Brandon Nelson McCarthy
Ms. Carmen Castillo Mitchell
Mr. Nathan Ochsner
Mr. Jeremy Raymond Sanders
Mr. Robert Thomas Smith
Mr. Michael A. Villa Jr.

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

UNITED STATES OF AMERICA,

Appellee,

v.

BRIAN SWIENCINSKI,

Defendant-Appellant.

No. 23-20163

**DEFENDANT-APPELLANT BRIAN SWIENCINSKI'S UNOPPOSED
MOTION TO ACCESS AND OBTAIN SEALED DOCUMENTS**

Pursuant to Federal Rule of Appellate Procedure 27 and Fifth Circuit Rule 27, Defendant-Appellant, Brian Swiencinski, files this Motion to Access and Obtain Sealed Documents, and in support states the following:

1. On September 14, 2023, the electronic Record on Appeal was filed in the above-captioned case.
2. Several documents and exhibits in the district court's record were filed under seal for various reasons, including because those documents contain PHI of third parties, bank-account information of third parties, as well as information related to plea negotiations and governmental investigations.

3. Mr. Swiencinski moves this Court to allow counsel for Mr. Swiencinski to view and obtain restricted or otherwise sealed documents contained in the Record. Specifically, Mr. Swiencinski requests that counsel be permitted to view:

- All restricted Trial Exhibits filed at Dkt 530 (Breimeister's Exhibits)
- All restricted Trial Exhibits filed at Dkt 528 (Redko's Exhibits)
- All restricted Trial Exhibits filed at Dkt 527 (McAda's Exhibits)
- All restricted Trial Exhibits filed at Dkt 516 (Swiencinski's Exhibits)
- The Trial Exhibit filed at Dkt 491 (Ince's Exhibit)
- Sealed Event(s) filed at Dkt 508, 503, 489, 443, 442, 412, 411, 410, 409, 401, 400, 397, 396, 391, 386, 385, 381, 379, 378, 370, and 368.

4. The ability to access the documents is necessary for Mr. Swiencinski's counsel to represent Mr. Swiencinski on appeal, and effectively prepare for Mr. Swiencinski's opening brief.

5. Counsel for Mr. Swiencinski conferred with counsel for the government regarding this request to access and obtain restricted documents, and the government stated that it is unopposed to this request.

WHEREFORE, Defendant-Appellant, Brian Swiencinski respectfully asks this Court to grant his Motion to Access and Obtain Sealed Documents.

Dated: September 19, 2023.

Respectfully submitted,

/s/ Robert T. Smith

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*Counsel for Defendant-Appellant
Brian Swiencinski*

CERTIFICATE OF COMPLIANCE

1. This Motion complies with the word limit of Fed. R. App. P. 27(d)(2)(A) because the Motion contains 276 words, excluding those parts exempted by Fed. R. App. P. 32(f).
2. This Motion complies with the typeface requirements of Fed. R. App. P. 32(a)(5), and the type style requirements of Fed. R. App. P. 32(a)(6), because it is prepared in proportionately spaced typeface using Microsoft 365 in 14-point font size and Book Antiqua type style.

/s/ Robert T. Smith

Robert T. Smith

Counsel for Appellant Brian
Swiencinski

CERTIFICATE OF SERVICE

I, Robert T. Smith, certify that on September 19, 2023, this Motion was filed with the Clerk of the United States Court of Appeals for the Fifth Circuit using the electronic case filing system, which in turn sent an electronic copy of this Motion to all attorneys of record in this case.

/s/ Robert T. Smith

Robert T. Smith

Counsel for Appellant Brian
Swiencinski